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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/669,677

09/23/2003

Jamie Hogan

HOGAN.001A

5544

7590

04/19/2006

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EXAMINER

NGO, LIEN M

ART UNIT

PAPER NUMBER

3754

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,677

Applicant(s)

HOGAN, JAMIE

Examiner

LIEN TM NGO

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-10,12,13 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2 and 5-10 is/are allowed.
- 6) ☒ Claim(s) 12,13,16 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/27/06 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It cannot be determined what are "comparable in diameter" and "a vertical profile substantially similar to that of said thread region of said body"; and "said exclusionary" lacks antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 12, 13, 19 and 20, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mathes et al. (6,016,930). Mathes et al. discloses, in figs. 3 and 10, apparatus comprising a body 20; a thread cap 10 having locking elements 34, 36; and a vertically extending exclusion ridge 30 having a diameter larger than the cap.

The statements of intended use of "bear excluding", etc. have been carefully considered, but deemed not to impose any structural limitations on the claims distinguishable over the Mathes et al. invention. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to employ does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structure limitations. Ex Parte Masham, 2 USPQ 2d 1647 (1987).

6. Claim 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by DeFelice (4,053,077) or Wittwer (3,741,421).

DeFelice or Wittwer teaches a container apparatus comprising a low profile cap and locking elements.

7. Claims 13, 19, 20, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Marchant (3,828,957). Marchant discloses, in figs.1-8, apparatus comprising a body 10 having an aperture being nearly the diameter of the body; a thread cap 23 having locking elements 28; an exclusion ridge 12.

The statements of intended use of "bear excluding", etc. have been carefully considered, but deemed not to impose any structural limitations on the claims distinguishable over the Marchant invention. It has been held that a recitation

with respect to the manner in which a claimed apparatus is intended to employ does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structure limitations. Ex Parte Masham, 2 USPQ 2d 1647 (1987).

8. Claim 21 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stull (4,298,129). Stull discloses, in fig. 1, a container apparatus comprising a plastic body 26 having a first locking element, a plastic cap having a second locking element. Plastic cap made from nylon is well known in the art, see Kowlik (3,893,582), col.2, lines 26-33.

9. Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Gargione (5,544,768) or Nagel (5,988,413).

Gargione discloses, in fig. 4, a container apparatus comprising a body 10' having a plurality of surface elements; a threaded cap 11 having a locking element 35, and exclusionary ridge 18 being capable of preventing moisture intrusion into the interior of the body.

Nagel discloses, in fig. 2, a container apparatus comprising a body 9 having a plurality of surface elements; a threaded cap 2 having a locking element 12, and exclusionary ridge 10 being capable of preventing moisture intrusion into the interior of the body.

Allowable Subject Matter

10. Claims 1, 2, 5-10 are allowed.

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11. The Declaration of Jamie under 37 CFR 1.132 filed 1/27/06 is insufficient to overcome the rejection of claims 12, 13 and 19-26 based upon the rejections as set forth in the this Office action due to the new ground rejections under 35 U.S.C 102(b).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL MAR can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO
Primary Examiner
Art Unit 3754



April 14, 2006